



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2487 of 2016 (PD)

&

C.M.P. (MD) No.11713 of 2016

T.Ganesan

.. Petitioner

Vs.

T.Savadamuthu

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order, dated 21.09.2016, made in I.A.No.124 of 2016 in A.S.No.9 of 2016, on the file of the Principal District Court, Dindigul.

For Petitioner

: Mr.V.Muthukamatchi

O R D E R

This Civil Revision Petition has been filed against the order and decretal order, dated 21.09.2016, made in I.A.No.124 of 2016 in A.S.No.9 of 2016, on the file of the Principal District Court, Dindigul.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.536 of 2011 on the file of the II Additional Subordinate Court, Dindigul.

3. Facts of the case:-

(i) The petitioner filed the suit for partition stating that the suit property is Hindu undivided joint family property.

(ii) The respondent filed written statement on 20.08.2012 denying the various averments made in the plaint and stated that the suit property was purchased by the respondent from and out of the money obtained by selling the jewels belonging to his wife, which were given at the time of her marriage as Sreedhana articles.

(iii) The learned District Judge, Dindigul, considering the pleadings, oral and documentary evidence, and arguments of the learned counsel for the parties, dismissed the suit.

(iv) Against the said judgment and decree, dated 29.04.2015, the petitioner filed A.S.No.9 of 2016 before the Principal District Court, Dindigul.

(v) Pending first appeal, the petitioner also filed a petition in I.A.No.124 of 2016 in A.S.No.9 of 2016 before the Principal District Court, Dindigul, for examining his mother-in-law viz., Aalammal.



(vi) According to the petitioner, the respondent, who is his brother, married the first daughter of Aalammal. The petitioner married second daughter. The said Aalammal, in the reply notice, dated 26.08.2015, stated that she gave only one ear stud and nose stud to the wife of the respondent. Therefore, he filed the petition to examine the said Aalammal.

(vii) The respondent filed counter affidavit and opposed the said application to examine the said Aalammal as his witness in the first appeal and stated that there is difference of opinion between his mother-in-law and his wife and therefore, the petitioner is taking advantage of the said difference of the opinion, has come out with the said I.A. for examining his mother-in-law as one of the witnesses in the suit. The suit was pending before the II Additional Subordinate Court, Dindigul, for four years i.e., from 2011 to 2015 and after proper appreciation of the fact and recording the evidence and on hearing the learned counsel for the petitioner and the respondent, the suit was dismissed. Therefore, the said I.A. is not maintainable and prayed for dismissal of the application.

(viii) The learned Principal District Judge, Dindigul, considering the averments made in the affidavit and counter affidavit and the materials available on record, dismissed the application holding that the petitioner did not take any steps to examine the said Aalammal before the Trial Court, even though the said suit was pending from 16.12.2011 to 29.04.2015.

4. Against the said order of dismissal, dated 21.09.2016, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the learned Principal District Judge failed to see that as per Order 41 Rule 26 C.P.C., evidence can be let in at appellate stage also. He further submitted that the learned Principal District Judge failed to see that by reply notice, dated 26.08.2015, the mother-in-law of the petitioner/respondent has specifically stated that she has given only one ear stud and nose stud to the respondent's wife at the time of marriage and thus, it clearly disproves the case of the respondent that he purchased the property from and out of the sale proceeds of gold jewels given to his wife at the time of marriage by his mother-in-law viz., Aalammal and prayed for allowing the Civil Revision Petition.

6. Heard the learned counsel for the petitioner.

7. The case of the petitioner for partition is that the suit property was purchased from and out of the joint family income. The respondent denied this averment and specifically stated that



he purchased the suit property from and out of the money derived from the sale of the jewels given to his wife, at the time of marriage. The petitioner did not take any steps to examine his mother-in-law, who is also the mother-in-law of the respondent, before the Trial Court. In the application filed for examination of the said Aalammal in the appeal, the petitioner has not given any reason for examining the said Aalammal as a witness before the Trial Court. The learned Principal District Judge considering the fact that the suit was pending from 16.12.2011 to 29.04.2015 before the Trial Court and the petitioner did not avail the said opportunity to examine the mother-in-law of the petitioner and the respondent, dismissed the said application. Hence, this Court is of the view that the learned Principal District Judge has exercised her jurisdiction properly and there is no illegality or irregularity in the said order.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Dindigul.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.V.Muthukamatchi, Advocate in SR No.80802

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& C.M.P. (MD) No.11713 of 2016
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